

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own)	Application No. C-3554/PI-112
motion, seeking to investigate whether the)	
zones established in Docket No. C-2516)	
are appropriate in light of NUSF-26 findings)	
and conclusions.)	

**COMMENTS OF ALLO COMMUNICATIONS, LLC,
MOBIUS COMMUNICATIONS COMPANY, AND
PINPOINT COMMUNICATIONS, INC.**

Allo Communications, LLC, Mobius Communications Company and Pinpoint Communications, Inc. (“Rural CETC’s”), by counsel and pursuant to the Opening Order of the Nebraska Public Service Commission (“Commission”) in this Docket, entered February 28, 2006 (the “Opening Order”), hereby provides the following reply to comments filed in this Docket.

I.

INTRODUCTION

The Rural CETCs are each privately owned telecommunications providers which have been granted authority by the Commission to operate as local exchange carriers within the State of Nebraska and have each been designated as eligible telecommunications carriers in Nebraska (“NETCs”), eligible to receive universal service support for supported services from the Nebraska Universal Service Fund (“NUSF”).¹ Each of the Rural CETCs offers facilities-based

¹ Allo Communications, LLC was granted authority to operate as a local exchange carrier pursuant to Commission Order in Application No. C-2844, entered January 7, 2003. Allo requested designation as an NETC and access to universal service support for supported services provided in Qwest Corporation (“Qwest”) exchanges in Application No. NUSF-36, which requests were granted by Commission Order entered August 26, 2003. Mobius Communications Company received authority to provide competitive local exchange telecommunications services

local service, nonfacilities-based interexchange resale service and other communications services to business and residential customers. Each of the Rural CETCs also provides wireline service through unbundled network element platforms (“UNE-P”) provided over the network and facilities of Qwest Corporation (“Qwest”).

The Rural CETCs filed a Joint Petition with the Commission on July 15, 2005 in Application No. C-3448/PI-102/NUSF-46 (the “Joint Petition”) requesting that the Commission investigate the impact of its Findings and Conclusions in Application NUSF-26, entered November 3, 2004 (the “NUSF-26 Order”), and its Findings and Conclusions in Application No. C-2516/PI-49, entered April 23, 2002 (the “Cost Study Order”), concerning the ability of competitive NETCs to economically provide competitive telecommunications services at affordable rates to business customers located in rural exchanges served by Qwest. The Rural CETCs requested interim and permanent relief from the terms and conditions of the NUSF-26 Order and the Cost Study Order which had the effect of eliminating competition for business telecommunications services in Qwest’s rural exchanges. The present Docket is part of the Commission’s investigation of the issues raised in the Joint Petition and therefore, the Rural CETCs have an interest in the manner in which NUSF support is calculated and allocated. Further, because the customers of the Rural CETCs are contributors to the NUSF, the Rural CETCs have standing to comment on proposals which will affect the calculation of NUSF support and the method for allocating that support.

by Commission Order entered August 7, 2001 in Application No. C-2551, and requested designation as an NETC and access to universal service support for supported services provided in Qwest exchanges in Application No. C-3480, which Application was granted March 7, 2006. Pinpoint Communications, Inc.’s authority to operate as a competitive local exchange carrier was granted pursuant to the Commission’s Order in Application No. C-2355, entered September 19, 2000. Pinpoint has been designated as an ETC eligible to receive federal universal service support in Application No. C-2659. It has also been designated as an NETC pursuant to Application No. NUSF-31.

II.

COMMENTS

A. Does the Commission have the Requisite Authority to Create More than the Three Zones Implemented in C-2516?

All parties which have filed Comments in this Docket agree that the Commission has the requisite authority to create “at least” three different zones which reflect geographic cost differences.² The proposed Unifying Method utilizes zones as determined in C-2516, but “bifurcates” each zone into “in-town” and “out-of-town” areas through the use of factors developed utilizing NUSF-26 data and results.³ Based on the legal authority cited by all commentators in this Docket, it is well-established and uncontroverted that this Commission has the requisite authority to create more than three cost-related rate zones.

B. Is the Unifying Method Proposed by the Commission a Sound Methodology or Should it be Modified or Changed?

Both Qwest and Nebraska Technology & Telecommunications, Inc. (“NT&T”) have argued that the Unifying Method is flawed because it is not TELRIC-compliant as required by applicable FCC Rules. Qwest and NT&T cite 47 CFR §§ 51.503(b)(1) and 51.505(a) for the proposition that an incumbent LEC’s rates for each element it offers, including UNE-Loop, must comply with the rate structure rules set forth in §§ 51.507 and 51.509 of the FCC Rules and must be established by the State Commission pursuant to a “forward-looking economic cost-based pricing methodology” (§ 51.503(b)(1)). Qwest and NT&T further assert that the Unifying Method does not create “just and reasonable rates” for interconnection as required by Section 252(d)(1) of the Telecommunications Act of 1996 (the “Act”), because the rates produced by the

² Qwest Corporation’s Initial Comments, dated May 3, 2006 (“Qwest Comments”), Page 2; Initial Comments of NT&T (“NT&T Comments”), Page 2; Joint Petition, Page 2.

³ Opening Order at Page 2, Footnote 9.

Unifying Method are not established pursuant to TELRIC principles.⁴ Both carriers also insist that a new cost study must be undertaken by the Commission before new UNE-Loop rates can be established,⁵ because the Unifying Method is merely a non-TELRIC based revenue allocation method that is not designed to determine UNE-Loop costs.⁶ Qwest concludes: “The Unifying Method represents an impermissible shortcut to proper TELRIC rate-making, and should be discarded.”⁷

1. The Unifying Method Is TELRIC-Based

While Qwest and NT&T correctly cite the legal requirements for establishing UNE-Loop rates under the Act and relevant FCC regulations, they have ignored this Commission’s clearly stated goals for establishing the Unifying Method and the dual rationales adopted by the Commission to marry a TELRIC-based pricing methodology with the relative costing mechanism, developed in NUSF-26, to allocate available NUSF support funds across high-cost areas within the state.

Contrary to Qwest’s assertions that the Unifying Method is not in actuality a method to determine the TELRIC cost of providing UNE-Loop, but merely a method to allocate Qwest’s hypothetical UNE-Loop revenue,⁸ the Opening Order states as follows:

Commission staff proposes modifying the zones as set forth in Exhibit A attached hereto. The staff’s Unifying Method (UM), detailed herein, modifies the UNE-L rates effective as a result of Application No. C-2516 and seeks to develop rates consistent with the support areas determined in Application No. NUSF-26.⁹

Without question, the Unifying Method is intended by the Commission to modify UNE-Loop rates utilizing the findings and methodology determined in the Cost Study Order!¹⁰ It is

⁴ Qwest Comments, Page 5; NT&T Comments, Page 4.

⁵ Qwest Comments, Page 5; NT&T Comments, Page 5.

⁶ Qwest Comments, Page 10.

⁷ Qwest Comments, Page 2.

⁸ Qwest Comments, Page 10.

⁹ Opening Order, Page 2.

also intended to modify the cost zones in a manner consistent with the findings in NUSF-26 adopting the Support Allocation Methodology (“SAM”), which concluded that density is the most significant factor in estimating loop costs, and recognizing that “in town” and “out-of-town” areas define critically important geographic cost centers which produce dramatically different UNE-Loop costs due to differing population and line densities. The Unifying Method is intended, therefore, as its name suggests, to “unify” the rationales from these two dockets into a meaningful and consistent NUSF program.

In unifying the concepts and rationales of the Cost Study Order and NUSF-26 Order, it is critical to point out that the Commission developed its findings and conclusions in both such Orders utilizing the Benchmark Cost Proxy Model (“BCPM”). This Commission had previously recommended the BCPM to the FCC for determining federal universal service support for non-rural carriers in Nebraska.¹¹ In the Cost Study Order, the Commission found that the BCPM, along with two other cost models, utilized a reasonable method to locate customers and build plant, is designed to reflect costs an efficient company would incur in providing facilities, using the latest and least cost technologies, and design plant to efficiently serve customers at their existing locations.¹² The Commission further found that BCPM employs scorched node, TELRIC, forward-looking, state-specific design to determine loop investment and UNE-Loop rates.¹³ “The Commission finds these models [including BCPM] comply with the TELRIC principles adopted by the FCC in the First Report and Order on Interconnection.”¹⁴

¹⁰ Opening Order, Page, 2, Footnote 8.

¹¹ *In the Matter of the Nebraska Public Service Commission, on its own motion, to conduct an investigation to determine which cost study model should be recommended to the FCC for determining federal universal service support*, Application No. C-1633 (May 22, 1998) (“Docket C-1633”).

¹² Cost Study Order, ¶ 70.

¹³ *Id.*, ¶ 70

¹⁴ *Id.*, ¶ 70

Likewise, the Commission utilized the BCPM in developing the SAM adopted in NUSF-26. In addition to reiterating its findings in Docket C-1633, the Commission noted that the BCPM also allows for analysis at a company-specific support-area level, which the Commission felt would lead to more reliable results when allocating the NUSF support funds.¹⁵

Based on the Commission's historic findings, it is clear that the Unifying Method is built on and specifically employs the BCPM, which has been repeatedly endorsed by this Commission as being a preferred TELRIC model.

2. No New Cost Study Proceeding Is Necessary

Qwest and NT&T insist that the Commission cannot alter its previously determined UNE-Loop rates without an additional cost study proceeding. This assertion is without merit. The Commission pointed out in the Cost Study Order the broad range of TELRIC principles and the flexibility such principles provide to regulators seeking to use them.

Although TELRIC establishes the framework for calculating rates, TELRIC "...is not a specific formula, but rather a collection of methodological principles."⁶ Because it is not a specific formula, TELRIC does not mandate specific rates but, instead, allows for a range of rates.⁷ The range must be established using inputs and assumptions consistent with TELRIC. The ability to establish rates that fall within a reasonable range gives state commissions "...wide latitude to account for local technological, environmental, regulatory, and economic conditions."⁸

⁶ *Id.* (quotations and citations omitted).

⁷ See Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FCC 01-29 (Rel. Jan. 22, 2001) (SBC Kansas/Oklahoma 271 Order) ¶ 91 (stating that TELRIC-based pricing can result in a range of rates).

⁸ *Sprint Communications Co., L.P. v. Federal Communications Commission*, No. 01-1076, 2001 U.S. App. Lexis 27292, at *16-17 (D.C. Cir. Dec. 28, 2001) (quotations and citations omitted).¹⁶

Therefore, TELRIC principles can produce a wide range of rates to accommodate differences in factors, such as population density and other state-specific conditions. The Commission's

¹⁵ NUSF-26 Order, Appendix A, Page 2.

¹⁶ Cost Study Order, ¶ 13.

decision in this Docket to use the Unifying Method to modify the zones and rates it approved in the Cost Study Order does not mean that it has abandoned or failed to utilize a TELRIC-based study to arrive at the new rates and zones. On the contrary, the Commission has taken great pains to ensure that the Unifying Method is in fact TELRIC-based, as is the SAM with which it seeks to develop consistency. The Commission has already conducted an exhaustive state proceeding, as required in § 51.505(e)(1), and has adopted a cost study that complies with the TELRIC principles mandated by the Act and the FCC. Another state proceeding to adopt another cost model is neither required nor necessary! The BCPM cost model, selected by this Commission in the Cost Study Order, the NUSF-26 Order, and recommended to the FCC for purposes of determining federal universal service support in Docket C-1633, provides the legal basis for adopting and utilizing the Unifying Method and no further hearings or contested proceedings are needed.

While Qwest and NT&T would like to delay this proceeding and the utilization of the Unifying Method through the initiation of a new cost study docket, it should be noted that with regard to the selection of the BCPM in the Cost Study Order, the Commission declined to make any specific findings concerning individual inputs related to UNE-Loop rates, which were the subject of extensive evidentiary hearings. Instead, the Commission decided to use each cost model's "default inputs":

The Commission believes any possible bias contained in each model and its associated inputs, will be minimized by utilizing the HAI, HCPM, and BCPM, each model's respective default inputs for cable placement, cost sharing, plant mix, and fill factors, Staff's adjustments to cost of capital and depreciation, where appropriate, and the averaging methodology presented by Staff. Further, the Commission agrees with Dr. Rosenbaum that the Staff's methodology develops cost-based Loop UNE rates that are nondiscriminatory, TELRIC-based, and reflect forward-looking, efficient technologies.¹⁷

¹⁷ Cost Study Order, ¶ 73.

Consequently, there is no need for further extensive fact-finding, discovery and a contested hearing as requested by Qwest and NT&T. The Commission has already satisfied those requirements and has embraced the BCPM as a TELRIC methodology which has flexibility to accommodate the Commission's reasoned goals of allocating its scarce NUSF support funds. The Commission is clearly not taking an "impermissible shortcut" to proper TELRIC rate-making, as alleged by Qwest.

C. The Unifying Method Produces Logical Results

Both Qwest and NT&T have asserted that the Unifying Method does not produce logical or accurate results. NT&T has commented that the wide disparity in rates generated by the Unifying Method will create "perverse incentives" for CLECs,¹⁸ and Qwest has submitted that the result of the Unifying Method "fails even to make mathematical sense, much less comply with TELRIC" and "yields counterintuitive results."¹⁹ However, the Rural CETCs believe that the rates produced by the Unifying Method are both logical and consistent with actual business experiences. The field experience of the Rural CETCs confirms that the cost of installing lines is higher in Zone 1 communities than Zone 2 communities because the majority of business lines in Zone 1 communities are located in very congested utility easements while in Zone 2 communities many of the areas remain aerial and relatively open. Further, wages and other fees are higher in the Zone 1 communities. By contrast, Zone 3 communities have a lower density of lines even though the utilities are generally aerial.

Further, the costs associated with "in-town" UNE-Loop produced by the Unifying Method verify the goal of the Commission to discontinue or limit NUSF support in high-density,

¹⁸ NT&T Comments, Page 4

¹⁹ Qwest Comments, Page 1

lower-cost areas in order to target support to low-density high-cost areas. The Unifying Method merely demonstrates what the NUSF-26 SAM methodology revealed, which is that loop cost is directly related to density, and that the Commission's methodology is intended to target support to the most costly and sparsely populated "out-of-town" service areas where NUSF support is needed.²⁰

III.

CONCLUSION

It is uncontroverted that the Commission possesses the authority to create more than the three zones implemented in Docket C-2516. The Rural CETCs believe that the Unifying Method is a realistic, TELRIC-based methodology for calculating UNE-Loop costs, identifying and establishing high-cost areas, and allocating scarce NUSF support funds to those high-cost areas where such support is most needed. The Unifying Method complies with the Act and FCC regulations, and "unifies" the findings and conclusions of the Commission in disparate Dockets to form a flexible, meaningful and consistent state policy. The Rural CETCs support the Unifying Method and encourage the Commission to adopt it as soon as possible.

Respectfully submitted this 26th day of May, 2006.

ALLO COMMUNICATIONS, LLC, MOBIUS
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²⁰ NUSF-26 Order, ¶ 11.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused the foregoing Reply Comments of Allo Communications, LLC, Mobius Communications Company, and Pinpoint Communications, Inc., to be served electronically and by hand delivery or U.S. mail, postage prepaid, on this 26th day of May, 2006, to the following:

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